

# Advisory Opinion

IECDB AO 2005-17

September 29, 2005

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the receipt of gifts by agency officials and employees and the filing of agency gift reports. The Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

This opinion is limited to the application of the laws as applied to persons in the executive branch of state government. Issues concerning gifts received by members of the General Assembly and employees of the legislative branch should be directed to the Senate and House Ethics Committees.

In 2005 Iowa Acts, House File 810, section 27, the General Assembly enacted new Iowa Code section 8.7 that requires, in part, "all gifts, bequests, and grants received by a department or accepted by the governor on behalf of the state" to be reported to the Board.

The issue has been raised whether gifts received by an official or employee triggers the requirement for the official's or employee's agency to file a gift, bequest, or grant report under Iowa Code section 8.7.

This issue also involves the application of Iowa Code section 68B.22. That law places restrictions on the ability of an official or employee to receive a gift from a "restricted donor" unless an exception applies or the gift is then donated to a public body, the Department of Administrative Services,<sup>1</sup> or an educational or charitable organization.

If an official or employee is given a gift and is legally permitted to receive the gift under Iowa Code section 68B.22, then the official's or employee's agency is not required to file a report under Iowa Code section 8.7. This determination is based on the fact that the gift is really being given to and received by the individual official or employee as opposed to the agency receiving the gift.

However, if the official or employee is not permitted to accept the gift and chooses to donate the gift to the official's or employee's own agency, then the agency would be required to file a report under Iowa Code section 8.7. This determination is based on the fact that the agency itself is now receiving the gift in question.

If the official or employee chooses to turn the gift over to the Department of Administrative Services or an educational or charitable organization, then no report is required under Iowa Code section 8.7 by either the original agency or the Department of Administrative Services.<sup>2</sup> Similarly, if the official, employee, or agency returns the gift to the donor, no report is required under Iowa Code section 8.7.

Officials or employees who have questions concerning the application of the "gift" law in Iowa Code section 68B.22 or the requirement to file a gift, bequest, or grant report under Iowa Code section 8.7 are encouraged to contact the Board for guidance. Officials and employees should also review the definition of "gift" in Iowa Code section 68B.2(9) and the definition of "restricted donor" in Iowa Code section 68B.2(24).

In closing, the Board notes that nothing in this opinion precludes an agency from voluntarily filing a gift, bequest, or grant report under the circumstances set out herein.

#### BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Janet Carl, Vice Chair  
Gerald Sullivan  
Betsy Roe  
John Walsh  
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup> The Department of Administrative Services is then required to dispose of the item by assignment to state agencies for official use or by public sale.

<sup>2</sup> In the event that the Department of Administrative Services then simply assigned the item back to the official's or employee's own agency the Board would view that situation as triggering the gift-reporting requirement.